



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/42134/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 9 June 2015

Decision Promulgated
18 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SABIR ALI SABIR

Respondent

Representation:

For the Appellant: Ms Savage, Senior Home Office Presenting Officer

For the Respondent: Mr S Khalid, instructed by Lords Solicitors

DECISION AND REASONS

1. On 27 April 2015, the Secretary of State was granted permission to appeal to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Roopnarine-Davies that was promulgated on 3 March 2015.
2. Judge Roopnarine-Davies allowed the appeal against the immigration decision of 10 October 2014 on the basis Mr Sabir had shown that it was more likely than not that he genuinely intended and was able to establish one or more businesses within six months and genuinely intended to invest a sum of £50,000. In so doing, Judge

Roopnarine-Davies found Mr Sabir to have met in full the requirements of paragraph 245DD(h) and (i) of the immigration rules which were the only matters in issue.

3. The Secretary of State did not seek to challenge these findings but argues that Judge Roopnarine-Davies was mistaken for thinking that the issues in the appeal related only to paragraph 245(DD)(h) and (i). It was clear from the reasons for refusal that the Secretary of State had also concluded that Mr Sabir had failed to provide evidence that complied with the specified documentation requirements of paragraph 41-SD(e)(iv) of appendix A to the immigration rules in relation to stating the duration of the contracts. Judge Roopnarine-Davies did not engage with this issue whatsoever and therefore the decision was unsound.
4. Mr Khalid conceded that Judge Roopnarine-Davies did not deal with this issue and that amounted to an error on a point of law. I have no reason to go behind his concession because it is clear from the reasons for refusal letter of 10 October 2014 that the Secretary of State alleged Mr Sabir failed to meet the requirement of paragraph 41-SD(e)(iv) and that is not addressed in the decision and reasons statement. It is necessary, in such circumstances, to set the decision aside to consider this issue.
5. The parties agree that Mr Sabir submitted two service agreements with his application as a Tier 1 (Entrepreneur) Migrant on 29 July 2014. These are the contracts on which he relies and which the Secretary of State says do not state duration. The contracts are in similar format. They include the following.

Term of Agreement

The terms of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement of the Parties.

In the even that either Party wishes to terminate this Agreement, that Party will be required to provide thirty (30) days' notice to the other Party.

Except as otherwise provided in this Agreement, the obligations of the Service Provider will terminate upon the earlier of the Service Provider ceasing to be engaged by the Customer or the termination of this Agreement by the Customer or the Service Provider.

...

Compensation

For the services rendered by the Service Provider as required by this Agreement, the Customer will provide compensation (the "Compensation") £[amount stated as relevant for each contract] per month to the Service Provider as follows.

...

[Thereafter is a schedule of 12 payments]

6. Looking at the contracts as a whole, it is evident to me that each contract is for a 12 month period although either could be terminated early or extended. The contracts also indicate the commencement date as being the same as the date signed.
7. Ms Savage was unable to point to any legal requirement that might indicate that the contents of Mr Sabir's contracts would not be regarded as specifying duration. I have considered the wording of paragraph 41-SD(e)(iv) and am aware that the immigration rules do not prescribe that the contract must state start and end dates or be for a minimum period. Neither do the rules prescribe that the contract is in any particular form (a point considered by the Upper Tribunal in Shebl (Entrepreneur: proof of contract) [2014] UKUT 00216 (IAC)). I conclude that the Secretary of State was wrong to conclude that the contracts did not specify duration.
8. However, even if I am wrong in this conclusion, I accept Mr Khalid's alternative submission. The provision relied upon by the Secretary of State can be found in paragraph 41-SD(e)(iv)(1)(d) of appendix A to the immigration rules. That is not the full content of paragraph 41-SD(e)(iv). The alternative provision of paragraph 41-SD(e)(2) is for an applicant to provide:

"one or more original letters from UK-regulated financial institutions with which the applicant has a business bank account on the institution's headed paper, confirming the dates the business was trading during the period referred to at (iv) above [a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application]."
9. With his application, Mr Sabir submitted a letter from Barclays Bank plc dated 2 July 2014 in which the bank confirmed he had opened a business bank account. Mr Sabir also submitted itemised bank statements up to the date of application confirming the business was trading, which could be seen by the credits made in line with the contracts. Mr Khalid said that these documents met the requirements of paragraph 41-SD(e)(iv)(2).
10. Ms Savage had little to argue other than the notion that the bank statements were not letters and that the evidence merely showed when the business account was opened. Ms Savage did accept that the bank documents were submitted with the application. They are specifically listed in the application form even though they were not included in the Secretary of State's bundle.
11. It is not difficult to envisage what the immigration rules require. The purpose of the requirements is to enable the Secretary of State to verify that the business is operating. If a business is receiving income it is trading. Bank documents will confirm whether a business is receiving income. To that extent, Mr Sabir's evidence is compelling. This is why I would find in favour of Mr Khalid's second argument even if my conclusion regarding the first were somehow mistaken.
12. For all these reasons, although I find that there was an error on a point of law in Judge Roopnarine's decision and reasons statement and that error is such that I must remake the decision, on remaking the decision I find that Mr Sabir met and meets all

the requirements of the immigration rules and his appeal against the immigration decisions should be allowed.

13. I add for completeness that as I find Mr Sabir succeeds under the substantive immigration rules, the decision to remove him by way of directions cannot be in accordance with the law and his appeal against that secondary decision also succeeds.

Decision

The decision and reasons statement of First-tier Tribunal Judge Roopnarine-Davies contains an error on a point of law and is set aside.

I remake the decision and allow Mr Sabir's appeal against the immigration decisions of 10 October 2014.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal